


Sixteen Candles:



Pulling Transition Services Out of the 80's




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What's the Plan?

- Overview of Transition Obligations
- Transition Assessment
- Procedural Requirements for Transition
- Substantive Requirements
- Implementation Issues

Transition Obligations



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Definition of Transition Services

SD Admin. Code 24:05:27:13:02

24:05:27:13.02. Transition services. Transition services are a coordinated set of activities for a student with a disability, designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to postschool activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based on the individual student's needs, taking into account the student's strengths, preferences and interests, and shall include instruction, related services, community experiences, the development of employment and other postschool adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

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Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

Regulations contemplate transition to:

SD Admin. Code 24:05:27:13:02

- Postsecondary education
- Vocational education
- Integrated employment (including supported employment)
- Continuing and adult education
- Adult services
- Independent living OR
- Community participation

Age 16

SD Admin. Code 24:05:27:13:02

24:05:25:16.01. Participation of student in IEP team meeting. If a purpose of the IEP team meeting is the consideration of postsecondary goals and transition services for a student, and if the meeting is for a child with a disability **beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team**, the notice also must:

- (1) Indicate that a purpose of the meeting is the consideration of the postsecondary goals and transition services for the student;
- (2) Indicate that the district will invite the student; and
- (3) To the extent appropriate, with the consent of the parents or a student who has reached the age of majority, identify any other agency that is likely to be responsible for providing or paying for transition services and that will be invited to send a representative.

Parental consent, or the consent of an eligible student who has reached the age of majority under state law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

Age 16

- Note that South Dakota teams are allowed to consider transition earlier
- Federal regulations allow states to require a younger age for transition services
- GAO has in past asked for age to be lowered to 14 again
 - “Youth with Autism: Federal Agencies Should Take Additional Action to Support Transition-Age Youth,” GAO-17-352 (May 4, 2017)

SD Admin. Code 24:05:27:01:03

24:05:27:01.03. Content of individualized education program. Each student's individualized education program shall include:

- (8) Beginning not later than the first IEP to be in effect when the student turns 16, or younger if determined appropriate by the IEP team, and updated annually thereafter, the IEP shall include:
 - (a) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, if appropriate, independent living skills; and
 - (b) The transition services (including courses of study) needed to assist the student in reaching those goals; and

Transition Assessment



"We talked about behavior when you saw me at the grocery store. We discussed his assessments when you saw me at Starbucks. We went over homework on the field trip, and spoke about reading at the playground. So... Seen any movies lately?"

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(b) The transition services (including courses of study) needed to assist the student in reaching those goals; and

Assessments

- There is no form or rubric, but go back to the basics: general IEP requirements and definition of "transition services"
- Whatever you do, don't make the resulting plan the exact same for every student or use a checklist only
 - *Andrew F:* "An IEP is not a form document."
- Consider a variety of formal and informal assessment tools based upon the individual needs of the student
 - Guidance available from many SEA's and educational organizations

Age-Appropriate Transition Assessment

- Age-appropriate transition assessment allows schools to:
 - develop post-secondary goals, related transition services, annual goals and objectives for the transition component of the IEP
 - make instructional programming decisions
 - include information in the present level of performance related to a student's interests, preferences, and needs in an IEP
 - guide recommendations for instructional strategies and accommodations help students learn about themselves, be better prepared, and engaged in career development
 - help students understand the connection between school and their post-school goals

Age-Appropriate Transition Assessment

- Transition assessment is the center of the IEP planning process for each student
 - Everything falls into place from here
- Allows the IEP team to support the student in developing quality post-secondary goals
- Transition assessment is a cycle
 - Assess, gather data throughout next calendar year, continue to assess, review and document results at annual IEP, and do it all over again

Letter to Olex

119 LRP 8445 (OSEP 2019)

- Ms. Olex asked whether parental consent is required prior to conducting "age appropriate transition assessments"
- OSEP: "Generally, parental consent is not required prior to conducting age appropriate transition assessment because the purpose is to develop appropriate postsecondary IEP goals and not to determine whether a child has or continues to have a disability, and the nature and extent of the special education and related services that the child needs."

Conducting and Utilizing Assessments

- First, utilize comprehensive assessment tools
- Then, use that data to determine what further formal and informal assessments are necessary
- The objective is to develop post-secondary goals that drive the entire IEP process
 - Beginning with the end in mind allows the IEP team to work smarter, not harder
- Don't fall into the "whaddya wanna be when you grow up" trap!

Transition Services Liaison Project Formal Transition Assessments

- Transition Planning Guidance
(<https://tslp.org/writing-ieps/#1543520171349-0b05b2cd-6ff6>)
- QuickBook of Transition Assessments
(https://www.ocali.org/up_doc/Quickbook_of_Transition_Assessment.pdf)

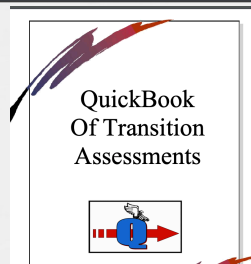
Resources for Formal Transition Assessments

Commonly Used Transition Assessments in South Dakota

Edrick-Sherman Transition Planning Scale (ETPS)
The ETPS is an excellent basic assessment tool for identifying strengths and needs in various transition areas, which also includes a questionnaire on identifying postsecondary goals. Three versions of this assessment are available for students of different functioning levels, with both parents and school personnel. By filling out and completing the ETPS for the student with mild to moderate disabilities with a student can be a good way to get to know that student better. The ETPS-B is for students with moderate to severe disabilities, and the ETPS-A is for students with the most significant disabilities.

Transition Planning Inventory - TPI-20
The TPI is an excellent starting tool for identifying various transition strengths/needs, which also includes a questionnaire on postsecondary goal identification. The TPI covers forty-six transition items. Data from Student, Home, and School forms can be assembled into a Profile and further Assessment Recommendation synthesis. A new internet assessment was added to the second edition. Comparison materials for further assessment are available. The questions are the same for transitioning students of all ability levels.

SD Skills: Available to all students in South Dakota through SD Career & Technical Education Office. SD Skills is the state-purchased Guidance suite recommended for state-required 4th grade interest assessment and 10th grade aptitude assessment. The computer-based portfolio program is accessed using a student ID and password. SD Skills can be used for assessment, career research, planning coursework, skill preparation, portfolio development, and it is available free of charge to SD students in grades 6-12. Many features match Indicator 13 requirements.



Informal Transition Assessments

- Informal assessments generally lack a formal norming process, and reliability or validity information
- Informal assessments require more subjectivity to complete and yield the best data when used on an ongoing basis and by more than one person to improve their validity

S.G.W. v. Eugene Sch. Dist., 69 IDELR 181 (D. Ore. 2017)

- High school student with ASD
- Transition goals:
 - learning skills related to a job in the law, acquiring a part-time job in a legal office, and learning to cook, maintain an apartment, and make a budget
 - Goals were not based on age appropriate transition assessments, but only on a single interview with student

S.G.W. v. Eugene Sch. Dist., 69 IDELR 181 (D. Ore. 2017)

- Transition services:
 - Student would take two "transitions" classes (finance and career), participate in a career day, and visit a local community college
 - These courses are generally available to all students and thus not individualized to meet student's needs

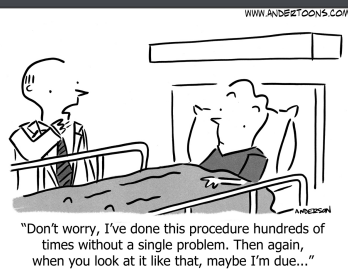
**S.G.W. v. Eugene Sch. Dist.,
69 IDELR 181 (D. Ore. 2017)**

- Transition implementation:
 - Student never took the career transitions class
 - Unclear whether she visited the community college
 - All student did was a single career day, which was appropriate but inadequate
- School:
 - student chose to take other classes
 - If she had taken class, she would have taken transition assessments that would have informed the development of transition goals and services.

**S.G.W. v. Eugene Sch. Dist.,
69 IDELR 181 (D. Ore. 2017)**

- Court:
 - School is attempting to place the blame for any transition services deficiency on student
 - Although the IDEA does not mandate any particular transition assessment tool, a student interview, without more, is insufficient.
 - Transitions classes available to all students could be a part of transition services; but can't be a one-size-fits-all.

**Procedural Requirements
Related to Transition**



Procedural Requirements Related to Transition

- Notice of Meeting
- Participants
- Required Elements of IEP

Notice of the Meeting SD Admin. Code 24:05:25:16

24:05:25:16. Parent participation. Each district shall take steps to ensure that one or both parents of the child are present at each IEP team meeting or are afforded the opportunity to participate. The district shall notify parents of the meeting early enough to ensure that they will have an opportunity to attend, scheduling the meeting at a mutually agreed-upon time and place. The notice to the parents shall state the purpose, time, and location of the IEP team meeting and who will be in attendance and inform the parents of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child, including information related to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the IDEA.

If a purpose of the IEP team meeting is the consideration of postsecondary goals and transition services for a student, the notice must also address the provisions of § 24:05:25:16.01.

If parents cannot attend, the district shall use other methods to ensure participation, including individual or conference telephone calls consistent with § 24:05:27:08.04.

Notice of the Meeting SD Admin. Code 24:05:25:16.01

24:05:25:16.01. Participation of student in IEP team meeting. If a purpose of the IEP team meeting is the consideration of postsecondary goals and transition services for a student, and if the meeting is for a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, the notice also must:

- (1) Indicate that a purpose of the meeting is the consideration of the postsecondary goals and transition services for the student;
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- (3) To the extent appropriate, with the consent of the parents or a student who has reached the age of majority, identify any other agency that is likely to be responsible for providing or paying for transition services and that will be invited to send a representative.

Parental consent, or the consent of an eligible student who has reached the age of majority under state law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

Notice of the Meeting
SD Admin. Code 24:05:25:16

- Notice must indicate:
 - that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child;
 - that the agency will invite the student;
 - identify any other agency that will be invited to send a representative

Mandatory Participants
SD Admin. Code 24:05:27:01.01

- Parents
- Regular education teacher
- Special education teacher
- Representative of the public agency
- Individual who can interpret the evaluation results
- Other individuals who have knowledge or expertise (at parents'/LEA's discretion)
- Whenever appropriate, the child with a disability

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- Whenever appropriate, the child with a disability.

Regular education teacher
SD Admin. Code 24:05:27:01.01(2)

"Not less than one regular education teacher of the student if the student is, or may be, participating in the regular education environment"

Regular education teacher
SD Admin. Code 24:05:27:01.02

24:05:27:01.02. Development, review, and revision of individualized education program. In developing, reviewing, and revising each student's individualized education program, the team shall consider the strengths of the student and the concerns of the parents for enhancing the education of their student, the results of the initial or most recent evaluation of the student, the academic, developmental, and functional needs of the student. The individualized education program team also shall:

(5) Consider whether the student requires assistive technology devices and services.

The regular education teacher of a student with a disability, as a member of the individualized education program team, must, to the extent appropriate, participate in the development, review, and revision of the student's individualized education program, including the determination of appropriate positive behavioral interventions and supports and other strategies for the student and the determination of supplementary aids and services, program modifications, and supports for school personnel that will be provided for the student consistent with subdivision 24:05:27:01.03(3).



Allen Park Public Schools
107 LRP 35419 (SEA MI 2007)

- 6 year old student with autism
- IEP team placed student in self-contained classroom for children with autism over parent objections
- IEP meeting did not include general education teacher
- Parents privately placed, sued for tuition reimbursement

**Allen Park Public Schools
107 LRP 35419 (SEA MI 2007)**

- School's attorney asked each witness "what would have been different in this IEP if a general ed teacher had been present"

**Allen Park Public Schools
107 LRP 35419 (SEA MI 2007)**

- Court:
 - "...the answer is that the general education teacher is responsible to participate in the development of the IEP of the child, **including the consideration and determination of the full range of positive behavioral interventions and strategies, supplementary aids and services, program modifications, and support for school personnel needed for integration of the student to the extent appropriate in the general education teacher's classroom,** and those determinations and consideration would have been notated or otherwise reflected in the student's June 7 IEP instead of omitted."

**Allen Park Public Schools
107 LRP 35419 (SEA MI 2007)**

- Court:
 - If, on the other hand, the general education teacher and the other school personnel at the IEPT **meeting had predetermined before the meeting that the student would not be integrated into a general education setting and the general education teacher's attendance at the meeting was merely a pro forma compliance with the IDEA requirements,** then there well might not have been any difference in the student's IEP **whether or not the general education teacher had attended the meeting or not.** But such a predetermination would impede the student's right to an education in the least restrictive environment as well as negate the parents' opportunity to participate in the decision-making process, both of which are a prima facie denial of FAPE under the Act.

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▪Court:

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**In re Student with a Disability
115 LRP 8587 (SEA NY 2014)**

- Student attended out-of-district placement from 7-11th grades
- 11th and 12th grade, ½ day at school, ½ at a vocational retail program
- 13th year IEP is subject of this dispute

**In re Student with a Disability
115 LRP 8587 (SEA NY 2014)**

- Parents wanted specific vocational program
- School decided to "hand schedule" a program to include internship, community program and reading program/academics
 - Academic program = 9 periods a day
 - Retail program = 5 periods a day
 - Internship = 2-3 periods a day

**In re Student with a Disability
115 LRP 8587 (SEA NY 2014)**

- Parents privately placed and sued for tuition reimbursement
- State Review Officer
 - The “program ... cannot be reasonably discerned and, as such, the parents did not have an adequate opportunity to make an informed decision as to its appropriateness prior to making a placement decision.”

**In re Student with a Disability
115 LRP 8587 (SEA NY 2014)**

- State Review Officer
 - “IEP team “was not properly composed in that neither the regular education teacher nor the special education teacher, who attended the meeting, were or would be a teacher of the student and that such violation further deprived the parents the opportunity to meaningfully participate in the development of the student’s IEP.”

Team Members Leaving Early

- Charlotte County Sch. Dist.*, 114 LRP 22660 (SEA FLA. 2013)
 - Regular education teachers left early
 - Parents not informed and did not consent in writing
 - SEA issued finding on non-compliance

Team Members Leaving Early
SD Admin. Code 24:05:27:01.05

24:05:27:01.05. IEP team attendance. A member of the IEP team described in subdivisions 24:05:27:01.01(2) to (5), inclusive, is not required to attend an IEP team meeting, in whole or in part, if the parent of a student with a disability and the school district agree in writing that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. A member of the IEP team may be excused from attending, in whole or in part, an IEP team meeting that involves a modification to or discussion of the member's area of the curriculum or related services, if:

- (1) The parent and school district consent in writing to the excusal; and
- (2) The member submits, in writing to the parent and the IEP team, input into the development of the IEP before the meeting.

Special education teacher
SD Admin. Code 24:05:27:01.01

"Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child."

Hewlett-Woodmere Union Free Sch. Dist.
117 LRP 50305 (SEA NY 2017)

- Student OHI, migraines, anxiety, ADHD
 - Homebound instruction for junior year
 - School proposing return to neighborhood school for senior year
 - Special education teacher from school attended as "special education teacher of the child."
- Family:
 - Wrong special education teacher
 - Inadequate transition assessment

Hewlett-Woodmere Union Free Sch. Dist.
117 LRP 50305 (SEA NY 2017)

- SEA:
 - Teacher at meeting would have been implementing IEP and "would be familiar with the types of accommodations available to students of similar needs within a 15:1+1 special class"
 - Person who administered transition assessment did not have to be at meeting

Individual who can interpret evaluation
SD Admin. Code 24:05:27:01.01(5)

"An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in subdivisions 2 to 6, inclusive, of this section;"

Bellflower Unif. Sch. Dist.,
69 IDELR 196 (SEA Cal. 2017)

- Student with ASD and ID
 - Student on track to graduate with diploma
 - Student said transition testing was "pointless"
 - Assessment indicated possible careers as a "costume designer...or taxidermist"
- Transition plan listed two goals: attend community college and get a job
- Mother wanted student to learn adaptive and functional skills

**Bellflower Unif. Sch. Dist.,
69 IDELR 196 (SEA Cal. 2017)**

- Staff:
 - can't get life skills on diploma track
 - can't change off diploma track without school psychologist

**Bellflower Unif. Sch. Dist.,
69 IDELR 196 (SEA Cal. 2017)**

- Administrative Law Judge
 - Student's medical professionals uniformly stated he would not have sufficient adaptive living skills
 - "diploma bound students can also be deficient in adaptive, functional living skills that hamper them from pursuing a transition's plans post-secondary goals."
 - If needed school psych to change tracks, she should have been at meeting

**Bellflower Unif. Sch. Dist.,
69 IDELR 196 (SEA Cal. 2017)**

- Awarded new IEE, compensatory education which the student could access "even after graduation"

Baltimore County Pub. Sch.
118 LRP 33376 (SEA MD 2018)

- Student on autism spectrum
- Notice of meeting included transition
- SEA Complaint about participants and notice of meeting
- Participant list
 - Included school psych (who did not attend)
 - Did not include transition coordinator (who later came into meeting)

Baltimore County Pub. Sch.
118 LRP 33376 (SEA MD 2018)

- School Psych
 - Not required to be at this meeting as not required to review the IEP
 - Not a violation to have a listed participant not attend meeting unless the staff member is a mandatory participant

Baltimore County Pub. Sch.
118 LRP 33376 (SEA MD 2018)

- Transition Coordinator
 - Not required member of the team, not anticipated to be at team and therefore not required to be listed on invitation
 - "This office finds no legal authority for the assertion that the complainant's approval was required in order for a member of the school staff to be consulted by the IEP team in order to address concerns he raised in the meeting"

Other Individuals
SD Admin. Code 24:05:27:01.01(6)

- "At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student **including related services personnel as appropriate.**"
- "The determination of the knowledge or special education expertise of any individual described in this section shall be made by the party (parents or district) who invited the individual to be a member of the IEP team."

The Student
SD Admin. Code 24:05:27:01.01(7)

"If appropriate, the student"

The Student
SD Admin. Code 24:05:16.02

24:05:25:16.02. Required student invitation. The district shall invite a student with a disability to attend the student's IEP team meeting if a purpose of the meeting is the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals.

If the student does not attend the IEP team meeting, the district shall take other steps to ensure that the student's preferences and interests are considered.

Gibson v. Forrest Hills Sch. Dist.
62 IDELR 261 (S.D. Ohio 2014)

- Multiply disabled student
- Relationship between school and parents acrimonious
- District did not invite student to meeting because they were concerned about student's ability to tolerate a lengthy, contentious IEP meeting

Gibson v. Forrest Hills Sch. Dist.
62 IDELR 261 (S.D. Ohio 2014)

- Hearing Officer:
 - Found procedural violation but did not order a remedy because of parents' responsibility for the poor relationship
- State Level Review Officer
 - District provided FAPE, so procedural error harmless
 - Parents were included as meaningful participants

Gibson v. Forrest Hills Sch. Dist.
62 IDELR 261 (S.D. Ohio 2014)

- District Court:
 - District violated requirement to invite the student to the meeting discussing postsecondary goals
 - Procedural violation might have been harmless if school had solicited student's input on her preferences and interests
 - District did not
 - Talk to student on her level about jobs
 - Take her to job shadow or assist
 - Conduct assessments

Baltimore County Pub. Sch.
118 LRP 33376 (SEA MD 2018)

- Student on autism spectrum
- Notice of meeting included transition
- Invitees included dad and student
 - School does not automatically go get kid from class to attend IEP meetings
 - School says it defers to parents' preference re whether student be brought out of class to meeting
 - Dad did not ask for student
 - Transition coordinator interviewed student

Baltimore County Pub. Sch.
118 LRP 33376 (SEA MD 2018)

- State Ed Complaint:
 - Student not at IEP meeting
 - Transition plan not created by person who actually interviewed student
- SEA:
 - Student invited to meeting as required
 - Student's preferences and interests communicated to team
 - IDEA doesn't require interviewer to be in meeting

Outside Agency
SD Admin. Code 24:05:27:01.01(8)

- "Transition services participants as described in §§ 24:05:25:16.01 and 24:05:25:16.02."
- Must seek consent **every time** district wishes to invite an agency representative to an IEP meeting
 - Letter to Gray*, 50 IDELR 198 (OSEP 2008)

Documenting a Transition Plan

- No specific format required
- Checklist not enough

Mason City Community Sch. Dist. 21 IDELR 241 (SEA Iowa 1994)

- Multiply disabled student
- School attempted to graduate based on checklist
- Transition planning inadequate

In re: Butte Sch. Dist. No. 1 73 IDELR 198 (D. Mont. 2019)

- Student turned 18 and IDEA parental rights transferred to him
- Attendance became hit and miss, disenrolling and re-enrolling multiple times
- District offered extended school year and other services but student rejected them, voicing desire to graduate on time and not return
- He was unsure of what he wanted to do other than graduate

In re: Butte Sch. Dist. No. 1 73 IDELR 198 (D. Mont. 2019)

- Student later filed a due process complaint, alleging in part a failure of the district to provide transition services
- In response, District provided documentation for career interest surveys, skill surveys, personality surveys, and lists of occupations based upon Student's preferences they had given to Student
- Also provided services intended to assist with post-secondary life (use of public transit, community service, exercise, etc.)
- District used this information to articulate three specific transition goals for student
- In light of the documented services provided, the Court found "[t]he District complied with the IDEA in administering age-appropriate transition assessments, developing measurable post-secondary goals, and providing appropriate transition services."

Letter to Pugh, 69 IDELR 135 (OSEP Jan. 18, 2017)

- Must report on progress toward **transition goals**
- No requirement to report on **transition services**

The dreaded "if needed" or "as needed"

- This is a general FAPE question, not just for transition
- "As needed" can be appropriate, but you need to think of it like a baseball umpire...
- If you're going to use "as needed"
 - Provide a rubric for when a service will be needed
 - Provide examples of when a service will NOT be needed
 - Make the discussion about the contours of the strike zone, not whether each pitch is a ball or strike

In re Student with a Disability
117 LRP 20565 (SEA III. 2017)

- Student graduated, parents filed for due process alleging he was improperly graduated
 - PLEP
 - Identified independent living skills “as needed”
 - Did not address student’s vocational interview or ability to meet interest in attending community college and own a business
 - Transition goals:
 - Only 2: tour a community college; set other goals
 - Did not include present levels
 - Were not individualized

In re Student with a Disability
117 LRP 20565 (SEA III. 2017)

“The Student expressed a desire to attend community college. However, there were no goals or transition services designed to provide increased support in the areas needed for him to pursue enrollment in a community college business program. Further, it was noted that the Student had no competitive vocational experience and he had identified independent living skill deficits. However, the District did not provide the Student with any vocational services nor did it provide any independent living skill assessment, goals, or services. The District failed to provide a transition plan, based upon age-appropriate transition assessments, to facilitate the Student’s movement from school to post-secondary education, employment, and independent living and thus denied him FAPE.”

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"The Student expressed a desire to attend community college. However, there were no goals or transition services designed to provide increased support in the areas needed for him to pursue enrollment in a community college business program. Further, it was noted that the Student had no competitive vocational experience and he had identified independent living skill deficits. However, the District did not provide the Student with any vocational services nor did it provide any independent living skill assessment, goals, or services. The District failed to provide a transition plan, based upon age-appropriate transition assessments, to facilitate the Student's movement from school to post-secondary education, employment, and independent living and thus denied him FAPE."

In re Student with a Disability
117 LRP 20565 (SEA III. 2017)

"The Student is a 20-year old male who graduated from high school May 25, 2014. The Student currently lives with his mother and grandmother. He is not prepared to go to college, does not leave his home much, does not socialize with friends, does not drive and does not know how to take public transportation."

In re Student with a Disability 117 LRP 20565 (SEA III. 2017)

- Remedy:
 - Did not rescind diploma
 - Ordered compensatory education
 - Placed student at a private therapeutic day school for post-secondary students for two years at district's expense

Substantive Requirements for Transition Plans and Services



Letter to Bereuter, 20 IDELR 536 (OSERS 1993)

"What if community experiences, the development of employment, and other post-school adult living objectives are impossible to deliver on due to demographics, location, or lack of facilities, i.e. potential employers (their liability position) or to do so intrudes on the source available to another school (neighboring larger town and school)?"

Letter to Bereuter,
20 IDELR 536 (OSERS 1993)

- "It does not appear that the factors described in your constituent's inquiry would be sufficient to relieve a public agency of its obligation to ensure that needed transition services are provided in these areas. 34 CFR § 300.346(b)(1)."
- I.e.: impossibility is not a defense

Nashoba Reg'l Sch. Dist.
119 LRP 20357 (Mass. SEA 2019)

- Student with Autism and ADHD had a "talent and passion for culinary arts (particularly baking) and a strong desire for a career in that field"
- Placed in culinary transition services program where student was placed in various job sites
 - Student found program monotonous
- Filed due process challenging sufficiency of Nashoba programs, seeking placement in a specialized vocational program

Nashoba Reg'l Sch. Dist.
119 LRP 20357 (Mass. SEA 2019)

- Student: The school's proposed program denies appropriate transition services due to equipment, staff, and instruction inadequate to prepare student for employment
- School: The program is appropriate to build transition skills in interpersonal relations, workplace behavior, and independence
 - IDEA does not require the transition services include vocational training in cooking and baking

Nashoba Reg'l Sch. Dist.
119 LRP 20357 (Mass. SEA 2019)

- HO: Student is not entitled to an educational program that maximizes potential, but is entitled to "meaningful" educational benefit
 - Record shows that, though rarely afforded opportunity to cook and bake at job sites, experiences provided meaningful educational benefit
 - The law does not require Nashoba to provide an ideal experience with expert instruction and opportunity
 - Transition services were sufficient under *Andrew F.*

K.C. v. Mansfield Indep. Sch.
52 IDELR 103 (N.D. Tex. 2009)

- Student with Williams Syndrome
 - Student interested in music but music was not included in transition plan or services
 - Instead school placed her in career prep activities in area of child care, fashion
 - Parents privately enrolled in residential placement that provides functional living skills training and music education

K.C. v. Mansfield Indep. Sch.
52 IDELR 103 (N.D. Tex. 2009)

- School:
 - 9th grade, K.C. participated in choir but fear of jeopardizing the choir's performance at contest
 - 10th grade transported to choir program in neighboring HS; received failing grades for each grading period because she could not read music
 - 11th grade placed in "Ready, Set, Teach" to assist a music teacher with kindergarten students; program proved inappropriate for K.C. and she was removed from it

K.C. v. Mansfield Indep. Sch.
52 IDELR 103 (N.D. Tex. 2009)

- Hearing officer:
 - K.C.'s skill scores were highest in child development, fashion, and child care.
 - K.C.'s interest scores were also highest in these areas.
 - K.C. also had a high interest score in the area of performing arts, but her skill score in this area was in the "very low" range.
 - Transition plan and services appropriate

Kid without Clear Career and Educational Path



Reynolds Sch. Dist.
115 LRP 3792 (SEA Ore. 2014)

- Student with learning disability
 - Had no idea what he wanted to do after high school
 - Excessively absent – withdrawn from school twice changed mind constantly
 - Absent on days when career assessments administered
- First IEP after student turned 16 had no transition services or post-secondary goals

Reynolds Sch. Dist.
115 LRP 3792 (SEA Ore. 2014)

- School administered transition assessment:
 - "Student is unable to articulate needs."
 - "Student does not want to work in retail or a restaurant."
 - Student has not been in school during assessment periods."

Reynolds Sch. Dist.
115 LRP 3792 (SEA Ore. 2014)

- Second IEP after student turned 16:
 - The Student's preferences, needs, and interests: "Student is going to work with transition specialist to "... help Student tease this out".
 - "At present, short of attending college student is unsure of aspirations in life."
 - Transition services: "student will take an art course and work with a transition specialist"
 - "The Parents reported that the Student had no interest or strengths in Art."

Reynolds Sch. Dist.
115 LRP 3792 (SEA Ore. 2014)

- SEA:
 - "...a student's absence does not constitute a good reason for failing to engage in transition planning as transition assessments are informal assessments that can happen any time based on student availability."
 - The Student has also not been enrolled in the Advanced Enrichment Class which is the District's proffered method of interest assessment..."

**Renee J. v. Houston Indep. Sch. Dist.,
73 IDELR 168, 913 F.3d 523 (5th Cir. 2019)**

- 17-year-old student with autism and ADHD
- Transition services began after ninth grade
- Prepared student for potential career in law enforcement
- Parents claimed this preparation was a denial of FAPE because "children with autism do not grow up to be police officers."

**Renee J. v. Houston Indep. Sch. Dist.,
73 IDELR 168, 913 F.3d 523 (5th Cir. 2019)**

- School argued its transition plan individualized for the student based on his interests
- Plan also included more basic goals including working part time during school, attending trade school, and preparing for work in the morning
- Court found no denial of FAPE. While his goals of being a police officer maybe "improbable," the plan still assisted the child with "developing basic life skills necessary for post-secondary life."

Life Skills Transition Goals



"My dad's teaching me how to mow the lawn, fish, and use the grill, I'm teaching him how to Google, text, and use an iPod."

CartoonStock.com

Geniviva v. Hampton Twnshp. Sch. Dist.
72 IDELR 57 (W.D. Penn. 2018)

- 21-year-old student with Down Syndrome and expressive language disorder
 - Throughout high school, parents sought to focus on student's academics and not functional life skills
 - School gave in philosophically on that preference
 - After certificate of completion, insisted on placement in life skills classes

Geniviva v. Hampton Twnshp. Sch. Dist.
72 IDELR 57 (W.D. Penn. 2018)

- Parents enrolled in ID program at local university and sued for tuition reimbursement
 - Argued high school classroom was not LRE
 - What is a "peer" under LRE?
- Hearing Officer:
 - Placement appropriate

In re Student with a Disability
70 IDELR 212 (MT SEA 2017)

- Student with cognitive delays
 - Graduated with regular high school diploma
 - Accepted at a local community college
 - Job at assisted living facility
- Parents challenging adequacy of student's postsecondary transition plan
 - No drivers license
 - Can't ride bike
 - Limited functional math

In re Student with a Disability

70 IDELR 212 (MT SEA 2017)

- Montana SEA:
 - “Although Student may still exhibit some difficulties now and into the future, that does not mean that Student’s transition services were inadequate or inappropriate. The transition plan developed for Student addressed training, education, employment and independent living taking into consideration Student’s interests.”

Graduation

SD Admin. Code 24:05:27:12

24:05:27:12. Graduation requirements. Completion of an approved secondary special education program with a regular high school diploma signifies that the student no longer requires special education services. A regular high school diploma does not include an alternative degree that is not fully aligned with the state's academic standards, such as a certificate or a general educational development credential (GED). Graduation from high school with a regular high school diploma constitutes a change in placement requiring written prior notice in accordance with this article.

The instructional program shall be specified on the individual educational program. The individual educational program shall state specifically how the student in need of special education or special education and related services will satisfy the district's graduation requirements. The IEP team may modify the specific units of credit described in § 24-43:11.02. Parents must be informed through the individual educational program process at least one year in advance of the intent to graduate their child upon completion of the individual educational program and to terminate services by graduation.

For a student whose eligibility terminates under the above graduation provisions, or due to exceeding the age eligibility for a free appropriate public education, a school district shall provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

Graduation

- Who decides?
 - IEP team, both for academic and goal achievement
- Change of placement?
 - Yes, send PWN and procedural safeguards
- “Summary of Performance”
 - SD Admin. Code 24:05:27:12
 - For a student whose eligibility terminates under the above graduation provisions, or due to exceeding the age eligibility for a free appropriate public education, a school district shall provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

Black River Falls School District

40 IDELR 163 (Wisc. SEA 2004)

- Student with ADHD/ED/BD
- Student did well in high school classes with support
 - Transition goal: attend 4-year college
 - No transition services other than those generally provided to all students
- End of junior year "caseworker realized that the Student would not be successful in a four-year college without support."

Black River Falls School District

40 IDELR 163 (Wisc. SEA 2004)

- Formally assessed fall of senior year; found to be in need of independent living skills
- December IEP contained
 - Goal re daily living skills
 - Goal re learning how to appropriately advocate for himself
 - Goal re appropriate social skills (Ex. 52).
 - Vocational training was added that included job shadowing.

Black River Falls School District

40 IDELR 163 (Wisc. SEA 2004)

- In April, district decided that student would graduate because he had more than enough credits
- Parents filed for due process
- ALJ:
 - Transition services inadequate
 - Improper to decide to graduate student based solely on his completion of required credits

To graduate or not to graduate?

- Too often viewed as a binary choice that should never be reconsidered
- Must be a data-driven decision
 - "Our data indicated" vs. "the team felt that"
- If an intensive 12-week course over the summer after senior year is appropriate, after which you can issue a diploma, do it!
- If a full day, five days per week schedule until 21 is appropriate, do it!

If the student will continue until 21, what does his/her day look like?

- What does the **data** indicate?
- We know and appreciate that regulators and commentators are suspicious of shortened days/weeks in year 13 and beyond
 - Some even say it's unlawful to have a shortened day/week
- If challenged, you must have good data and be able to articulate "a cogent and responsive explanation"
- The "I" in IEP applies whether you're criticizing or supporting the school

What about parental requests to rescind a diploma?

- Increasing number of these requests/cases
- IDEA is silent on whether an ALJ/HO can rescind
- Parents and advocates have realized raising this issue brings on possible money damages in addition to compensatory education
- Courts have generally said:
 - The court can't force a school to rescind a diploma
 - The court can order compensatory education
 - The court can award money damages to functionally fund services beyond the applicable time period under IDEA

Quabbin Reg'l Sch. Dist.,
44 IDELR 56 (SEA MA 2005)

- Student with language disabilities placed by the public school in a private school
 - Private school graduated student
 - The day after graduation she returned the diploma
- She filed d.p. against public school based on transition failures
- School filed motion to dismiss

Quabbin Reg'l Sch. Dist.,
44 IDELR 56 (SEA MA 2005)

- Hearing Officer:
 - Case could proceed against public school based on transition allegations
 - "a School District's decision to graduate a student may be rescinded if it was based only on his accumulation of required credits and did not reflect sufficient progress on his IEP goals and objectives"
 - Even if the student's graduation was valid, the district could not use it as a defense to their claim for compensatory education

Implementation Issues



"To get what you want, first create a list of compelling and meaningful goals. Next, draft a dynamic plan of action, then follow through with consistent maximum effort. If that doesn't work, just cry and point."

Implementation of Transition Services 34 C.F.R. 300.18(b)(2)

- Transition statement must include three areas:
 - Instruction
 - Community experiences
 - Development of employment and other post-school living objectives
- Must include, where appropriate the acquisition of
 - Daily living skills and
 - Functional vocational evaluation

Implementation During COVID-19

- The IDEA does not have specific guidance for the implementation of IEPs during extended school closures (more than 10 school days) that occur as a result of local, state, or national emergencies
- The U.S. Department of Education stated that "the [local educational agency] would not be required to provide services to students with disabilities during the same period of time" if the school closes due to COVID-19 and does not provide educational services to the general student population

Implementation During COVID-19

- If a school district provides the general student population with educational services during an extended school closure as a result of COVID-19, they must also provide services to students with disabilities, including FAPE
- When school resumes, school districts must provide special education and related services as required by the IEP and Section 504
 - Also have to make an individualized determination regarding FAPE
 - This is **not** the same as compensatory education
 - But that's the phrase that's stuck!

Documentation of Implementation

- *Lee County Sch. Dist.*, 114 LRP 23165 (SEA Florida 2014)
 - No documentation that school provided speech therapy services and classroom accommodations
 - Existing documentation showed the student did not receive all the special education instruction
- *East Allen County Sch. Corp.*, 63 IDELR 60 (SEA Indiana 2014)
 - No documentation showing teacher notes provided and used during tests
 - E-mail survey to teachers inadequate to prove
 - SEA looked for notes, lesson plans, etc.

Work experience and PWN...oh my! SD Admin. Code 24:14:14:03

24:14:14:03. Prior written notice. Prior written notice must be provided to the parents five days before a public agency or service provider proposes or refuses to initiate or change the identification, evaluation, or placement of their child or the provision of appropriate early intervention services to the child and the child's family. The notice must be in sufficient detail to inform the parents of the action that is being proposed or refused, the reasons for taking the action, and all procedural safeguards that are available under this article, including a description of mediation, how to file a state complaint, a due process complaint, and any timelines under those procedures.

Work experience and PWN...oh my!

- "It depends."
- Must look at how it is worded in the IEP/transition plan
- The more specific the wording ("At Karen's Autobody"), the more likely changing locations/programs is a change in placement
- But can't be too vague so as not to adequately define the placement ("Work experience at an off-site location.")
- Our current thought: if in doubt, send a PWN and procedural safeguards, and here's why...

Questions?